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expedited execution dates for these individuals. Attach. A. The State of Tennessee is likely to request that the Tennessee Supreme Court set execution dates for these individuals soon. Count III of Mr. Zagorski's complaint alleges that Tenn. Code Ann. § 40-23-116 unconstitutionally limits Mr. Zagorski's access to the courts during his execution by arbitrarily limiting him to a single attorney-witness without access to a telephone—in violation of the First, Eighth, and Fourteenth Amendments. Doc. No. 1 at 31.

The Court should allow intervention as of right under Rule 24(a)(2), as the Proposed Intervenor has an interest in the transactions that are the subject of Mr. Zagorski's action and are situated such that disposing of his action will impair or impede their ability to protect their interest. The State of Tennessee and these Defendants have shown that they will continue to not provide telephone access to inmates during an execution without an explicit order requiring them to do so. The State abided by this Court's order that it provide telephone access for attorney-witnesses in *Coe v. Bell*, 89 F. Supp. 2d 962, 966 (M.D. Tenn.), *vacated on other grounds*, 230 F.3d 1357 (6th Cir. 2000). But since the State killed Coe and the Sixth Circuit dismissed his case as moot, prison officials have been unwavering in their refusal to provide a telephone, even though the TDOC Commissioner himself has expressed no opposition to providing telephone access.

Even after this Court enjoined Defendants from executing Mr. Zagorski without providing his attorney-witness with immediate access to a telephone during his execution (Doc. No. 15 at 9), Defendants refused to respond to emails and

telephone calls from Mr. Zagorski's counsel inquiring about how they would provide the ordered telephone access. Counsel was required to file a motion to compel to obtain information about how Defendants would provide telephone access (Doc. No. 21) followed by an order of this court (Doc. No. 22) for Defendants to provide counsel with that information. As Defendants' repeated intransigence demonstrates, they do not want inmates' counsel to have access to a telephone during executions. Thus, as soon as the State kills Mr. Zagorski tonight, Defendants will take the position that this case is moot and should be dismissed, leaving the Proposed Intervenor without telephone access to the court during their executions.

Alternatively, the Court should allow permissive intervention under Rule 24(b)(1)(B) as the Proposed Intervenor share with the main action common questions of fact and law. Indeed, the Proposed Intervenor's access-to-courts claim is identical to Mr. Zagorski's. The facts relevant to consideration of the constitutionality of Defendants' restrictions on Mr. Zagorski's access to courts support this Court's conclusion that telephonic access to courts is constitutionally required during an execution, as to all inmates. *See generally* Complaint, Doc. No. 1 at 27-28. This Court's conclusion that denial of telephonic access is unconstitutional and the issuance of an injunction requiring Defendants to provide counsel with a telephone during Mr. Zagorski's execution (Doc. No. 15 at 9) should apply equally to the Proposed Intervenor. Thus, allowing intervention will save judicial resources.

Pursuant to Rule 24(c), the Proposed Intervenorors have attached a complaint that sets out the claim for which intervention is sought—Count III of Mr. Zagorski’s complaint. Attach. B.

The parties have been contacted about this motion. Defendants oppose the motion. Mr. Zagorski does not.

### Conclusion

For these reasons, the Proposed Intervenorors respectfully request that the Court issue an order allowing them to intervene in this case.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Kelley J. Henry, hereby certify that a true and correct copy of the foregoing document was electronically filed and sent to the following via email on this the 1st day of November, 2018 to:

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